JUDGMENT OF THE COURT (Fifth Chamber)
11 December 1997 *

In Case C-190/97,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Jan Devadder, General Adviser in the Legal Department, Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with

— Commission Directive 93/72/EEC of 1 September 1993 adapting to technical progress for the nineteenth time Council Directive 67/548/EEC on the

* Language of the case: French.

approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1993 L 258, p. 29), and

— Commission Directive 93/101/EC of 11 November 1993 adapting Directive 67/548 to technical progress for the twentieth time (OJ 1994 L 13, p. 1),

the Kingdom of Belgium has failed to fulfil its obligations under those directives,

THE COURT (Fifth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, D. A. O. Edward, J.-P. Puissochet and L. Sevón, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 October 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 May 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty

for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with

— Commission Directive 93/72/EEC of 1 September 1993 adapting to technical progress for the nineteenth time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1993 L 258, p. 29), and

— Commission Directive 93/101/EC of 11 November 1993 adapting Directive 67/548 to technical progress for the twentieth time (OJ 1994 L 13, p. 1),

the Kingdom of Belgium has failed to fulfil its obligations under those directives.

2 By virtue of Article 2(1) of Directives 93/72 and 93/101, the Member States are to implement the laws, regulations and administrative provisions necessary to comply with those directives no later than 1 July 1994 as regards the former directive and 1 January 1995 as regards the latter, and to inform the Commission thereof forthwith.

3 On the expiry of those periods, since it had not received from the Kingdom of Belgium any communication or other information relating to the measures transposing the directives in question into national law, the Commission gave formal notice to the Belgian Government, on 20 January 1995 as regards Directive 93/72 and 2 August 1995 as regards Directive 93/101, requiring it to submit its observations within a period of two months, in accordance with Article 169 of the Treaty.

4 By letter of 22 March 1995, the Belgian Government informed the Commission that measures for the transposition of Directive 93/72 were being prepared.

5 On 26 July 1996, since it had received no information regarding the adoption of those measures, the Commission sent a reasoned opinion to the Belgian Government requesting the latter to comply with its terms within a period of two months of its notification.

6 In response to that reasoned opinion, by letter of 18 September 1996 the Belgian authorities drew the Commission's attention to the adoption of the Royal Decree of 23 June 1995 amending the Royal Decree of 11 January 1993 governing the classification, packaging and labelling of dangerous preparations for the purpose of marketing or using them. They claimed that this royal decree had brought about the transposition of Directive 93/72 into Belgian law.

7 After determining that the royal decree in question concerned dangerous preparations but not the dangerous substances that were the subject-matter of Directive 93/72, the Commission requested the Belgian Government, by letter of 29 January 1997, to submit its observations on the matter. There was no response to that letter.

8 As regards Directive 93/101, the Belgian Government stated by letter of 4 October 1995, in reply to the letter of formal notice, that the Royal Decree of 23 June 1995, cited above, had inserted that directive in the list of substances referred to in Part I of Annex III to the Royal Decree of 11 January 1993, cited above.

9 The Commission, taking the view that this legislation did not cover dangerous substances but only dangerous preparations, and did not therefore transpose

Directive 93/101 in full, sent a reasoned opinion to the Belgian Government on 12 July 1996 requesting the latter to comply with its terms within a period of two months of its notification. The Belgian Government did not respond to that reasoned opinion.

10 In those circumstances, the Commission decided to initiate the present proceedings.

11 The Kingdom of Belgium does not dispute the failure to adopt all the measures necessary to transpose the directives into national law within the periods laid down. It explains that, in the case of Directive 93/72, a draft royal decree has been signed by the ministers concerned and will soon be submitted to the King for signature and that, in the case of Directive 93/101, only the section regarding 'substances' remains to be transposed.

12 Since the transposition of the directives in question has not been fully achieved within the period laid down therein, the action brought by the Commission must be considered to be well founded.

13 It must therefore be held that, by failing to adopt within the periods prescribed all the laws, regulations and administrative provisions necessary to comply with Directives 93/72 and 93/101, the Kingdom of Belgium has failed to fulfil its obligations under Article 2(1) of those directives.

Costs

14 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the periods prescribed all the laws, regulations and administrative provisions necessary to comply with**

   — **Commission Directive 93/72/EEC of 1 September 1993 adapting to technical progress for the nineteenth time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, and**

   — **Commission Directive 93/101/EC of 11 November 1993 adapting Directive 67/548 to technical progress for the twentieth time,**

   the Kingdom of Belgium has failed to fulfil its obligations under Article 2(1) of those directives;

2. **Orders the Kingdom of Belgium to pay the costs.**

Gulmann Moitinho de Almeida Edward

Puissochet Sevón

Delivered in open court in Luxembourg on 11 December 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber